IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.1692 OF 1987

Hind Industrial Syndicate ..Plaintiff.

Vs.

Surinder Singh Pritamsingh & Ors. ..Defendants.

...

Mr. S. R. Saudagar the Plaintiff present.
None for the Defendants.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

24th August, 2006.

P.C. :

1. The suit has been instituted by the Plaintiff for the recovery of a sum of Rs.76,619/- from the First and Second Defendants together with interest on the principal sum of Rs.70,725/- at the rate of 18% per annum from the date of the institution of the suit until payment or realization. The Plaintiff seeks a declaration that the aforesaid amounts constitute a first charge on the motor vehicle bearing registration No. MMS - 3874 and that the vehicle is validly pledged and hypothecated in favour of the Plaintiff to secure the repayment of the loan. A declaration has also been sought to the effect that the Plaintiff has a first

charge and lien on the amount due and payable by the Third Defendant under an insurance policy taken out in respect of the vehicle. Other consequential reliefs have been sought.

2. An agreement was entered into on 11th December, 1986 between the Plaintiff as financier of the first part and the First Defendant as borrower and the Second Defendant as guarantor by which the Plaintiff lent and advanced to the First Defendant a sum of Rs.70,000/- on the terms and conditions set out therein. The amount was liable to be repaid in installments with interest at the rate of 18% per annum. As and by way of security for the repayment of the amount advanced, the First Defendant pledged and hypothecated in favour of the Plaintiff a motor vehicle being a Tata Motor Truck 1984 model bearing Registration No. MMS-3874. It was agreed that the repayment of the amount and interest constituted a first charge and lien on the motor vehicle. The First Defendant failed and neglected to pay the installments. The Plaintiff has averred that by a letter dated 25th February, 1987 the RTO informed the Plaintiff that the truck had also been hypothecated with Shramik Sahakari Bank Limited, the Fourth Defendant. It is averred that the Plaintiff contacted the First

Defendant who admitted that he had forged the signature of the Plaintiff and by getting the hypothecation endorsement canceled he had made a declaration on 4th March, 1987. The Plaintiff filed a complaint in the Court of the Metropolitan Magistrate, 33rd Court being Case No.8/W/87 and in pursuance of an order passed by the Magistrate the police seized the vehicle on 8th April, 1987. At that stage, it was found that the vehicle was in a shattered condition without any body, cabin or steering. Certain parts of the vehicle were found to be missing. In these circumstances, the suit has been instituted. Shramik Sahakari Bank Limited was impleaded as the Fourth Defendant to the suit.

3. During the pendency of these proceedings the Court Receiver was appointed as Receiver of the vehicle by an order dated 16th November, 1988 in Notice of Motion 1710 of 1987. Subsequently on 17th August, 1992 a learned Single Judge of this Court, while disposing of Motion 610 of 1990, referred to the report of the Court Receiver which showed that the vehicle had been rendered to a scrap condition. The Court Receiver was directed to sell the truck by inviting offers on an as is where is basis. The Court Receiver was also directed to settle the claim with the

insurance company, the Third Defendant, in respect of the damage which had been occasioned to the vehicle in the year 1987 as a result of an accident. Counsel appearing for the Plaintiff has stated before the Court that the claim under the insurance policy was accordingly settled with the Third Defendant and the claim amount is accordingly deposited by the Third Defendant with the Court Receiver.

4. None of the Defendants have filed a written statement though they have been served. The Plaintiff has filed his affidavit in lieu of the examination-in-chief and a compilation of the original documents which is tendered and taken on record. The claim is duly proved.

5. In these circumstances, the suit would have to be decreed as prayed. The suit is accordingly decreed as against the First and Second Defendants in the sum of Rs.76,619/-. The Plaintiff shall also be entitled to simple interest at the rate of 12% per annum on the principal sum of Rs.70,725/- from the date of the institution of the suit until payment or realization. The Court Receiver is directed to release in favour of the Plaintiff the amount

which is lying in deposit on account of the claim which has been settled by the Third Defendant, together with the accrued interest thereon, which shall be adjusted against the decretal amount. The Plaintiff shall be entitled to the costs of the suit from the First and Second Defendants.